Supreme Court, U.S.
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No. 05-67

In The

Supreme Court of the United States

Joan Tunny,

Petitioner,

v.

Metropolitan Life Insurance Company,

Respondent.

On Petition for a Writ of Certiorari to United States Court of Appeal for the Second Circuit

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PETITION FOR WRIT OF CERTIORARI

Joan Tunny, Pro Se
213 5th St., S.E.
Washington, D.C 20005
(202) 547-3399

July 11, 2005

QUESTIONS PRESENTED

1. May an employer maintain a cap on initial earnings at prior earnings and a compensation policy that is controlled by the processing time of sales, when this allows systemic discrimination against groups, in this case women, in a manner forbidden by Title VII of the Civil Rights Act of 1964, simply because they state these policies are applied to all account representatives, when simple arithmetic shows that these policies can be manipulated to control earnings and retention?

2. May an employer maintain a workforce that is primarily male who are required in their business plan to choose a primary market and thereby discriminate in choosing not to focus their marketing activities on women clients who as a result do not receive equal access to financial products and services?

3. May the State Insurance Departments that regulate insurance validate these employment policies when they discriminate against groups in a manner that is forbidden by Title VII of the Civil Rights Act of 1964.

4. Is it not a denial of due process where a plaintiff, injured by a hostile and discriminating work environment, is denied a meaningful opportunity to be heard on the merits based on court decisions that misinterpret and disregard evidence presented and refuse requests by plaintiff for information required for further evidence?

5. Is it not a denial of due process when a plaintiff's financial state has been so injured by an intimidating, hostile and offensive work environment that they cannot afford legal representation to fairly resolve the matter?

PARTIES TO THE PROCEEDING

The parties to the proceedings are Joan Tunny, Petitioner, and Metropolitan Life Insurance Company, Respondent.

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OPINIONS BELOW

The Summary Order of the United States Court of Appeals for the Second Circuit, filed September 27, 2004, Present: Hons. Meskill, McLaughlin and Parker, appears at Appendix A to the petition and is unpublished.

The Opinion of the United States District Court, filed March 26, 2003, District Judge Dearie, appears at Appendix B to the petition and is unpublished.

JURISDICTION

This cases arises out of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2e to 2000e-17 (gender) establishing jurisdiction in the Federal Courts.

The date on which the United States Court of Appeals decided my case was September 27, 2004.

A timely petition for rehearing was denied by the United States Court of Appeals on April 13, 2005.

This Petition is being timely filed within 90 days from the decision of the United States Court of Appeals.

The jurisdiction of this Court is invoked under 28 U.S.C. §11254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Title VII, Civil Rights Act, 1963, amended 1991.

STATEMENT OF THE CASE

A. Factual Background

Petitioner responded to an advertisement in The Washington Post for a position as an account representative with Metropolitan Life Insurance Company (MetLife's) Fairfax, Virginia office in 1993 that offered income comparable to her earnings at the time when she was fully employed at a position she held from November 1986 to March 1993 with annual earnings of $37,500. Her position was being eliminated. Petitioner had recently completed advanced graduate study in economics and demographics at the University of Maryland. She understood the need that women had for financial services and products and believed that financial services would be a rewarding career.

Petitioner was not offered a position at the time of her interview ostensibly because there were no openings at that office that had posted the advertisement. The following year, in April of 1994, when she was unemployed, MetLife contacted Petitioner that they now had a suitable opening in their Gaithersburg, Maryland office.

This delayed hiring justified Respondent hiring Petitioner at a lower initial income. *See* MetLife's "Manual of Instruction for Regional Sales Offices," Instruction 27A, and excerpt from "Recruiting and Selection Manual": "Since the payment recommended after considering these factors should not exceed the individual's prior income ... ." *See* Appendix D, p. 40a.

Because of this policy to allow this one factor, prior income or income at the time of hire, to determine the maximum initial income of an account representative, Petitioner began her career with a serious impediment to overcome, reduced income. Petitioner's IPL did not reflect her qualifications, income need and prior earnings over the past seven years, but her income at the time of hire from unemployment compensation and substitute teaching. Her initial compensation should have been based on her full employment experience and educational background. She should have been compensated at a level sufficient to maintain an established standard of living. She was assured at her interview that she would soon overcome this impediment and regain and exceed her former earnings. In fact, this is impossible during the first three years of an account representative's employment when they are considered "in training" and subject to prescribed compensation guidelines.

During her first year as an account representative, concerns first expressed to the Regional Manager during her pre-appointment training, became reality. Petitioner was subjected to continuous harassment including sexual misconduct on the part of male account representatives and non-sexual behavior including disruption of her work while she was at the office, transfer of her existing book of business, withholding of a compensation manual and laptop computer, damage to her insurance polices, misplacing of her mail and a deposit check for an insurance policy, excrement in the office conference room, delays in the processing of her business, declines of higher commission insurance plans and serious damage to her automobile. At year end, immediately following a written complaint to her agency Manager regarding the difficulties Petitioner was experiencing in the New Hampshire Avenue office, Petitioner's income began to decline. This reduction in income continued throughout her employment and is evidence of a continuing violation in the retaliation against Petitioner.

Quarter	Quarter End Date	Weekly Payment Level[1]
5	02/19/96	$483.39
6	05/20/96	$399.21
7	08/19/96	$181.57
8	11/18/96	$195.47
9	02/17/97	$436.53
10	05/17/97	$500.00
11	08/18/97	$293.03

Under MetLife's compensation plan, during the first year policy fixes the account representative's income but allows for termination. In the second year, both the account representative's income and employment are at risk. As soon as Petitioner began her second year, Respondent used this policy to retaliate against her for her complaints of harassment during her first year.

In fact, when Petitioner's income began to decline following her complaint, at quarter end February 19, 1996, she was the highest female producer in her office and she had enough written business pending to allow her to maintain her income and increase her IPL. This business included insurance applications of three women. One of these was for a teacher written January 2, 1996 that was declined by MetLife for undocumented reasons. This woman has a provided a sworn affidavit stating that her physician appealed this decision and she was still declined by MetLife. The applicants canceled the two others, written January 30, 1996 and February 3, 1996, after an unusually excessive processing time. Had these applications been timely processed, they would have allowed Petitioner to far exceed her production requirement and begin to reestablish her former income. However, following an arduous and inordinately lengthy processing period, these other two

[1] Petitioner's net pay was further reduced after deductions of taxes, benefit contributions, and license fee costs.